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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,544	03/29/2004	Bernard K. Simcovitch	5515	8962

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EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 11/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/810,544	Applicant(s) SIMCOVITCH, BERNARD K.	
	Examiner Robin A. Hylton	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 13-15, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 9-12, 16 and 17 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the material composition of the closure lid and the beverage container being different and the same as set forth in claims 2,3,14,18, and 19, the plastic material of the closure lid as set forth in claims 5,6,8,11,12 and 15, and the closure lid snugly fitting over a top lid of the beverage drink container as set forth in claim 19 must be shown or the feature canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. Claim 19 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claim sets forth a beverage container top lid in addition to the closure lid with the closure lid fitting snugly over the beverage container top lid. There is no description for this claimed subject matter.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Rubendall (US 5,358,136)

It is noted that the preamble of the claims clearly only set forth the closure lid as the claimed invention. The closure lid does not require the beverage container structure but merely needs to be capable of being used with a beverage container. Thus, claim 1 is considered to be drawn only to the closure lid.

Dependent claims 18 and 19 positively set forth a relationship between the closure lid and the beverage drink container. Therefore, in keeping with recent case law and Office policy, these claims are considered to be drawn to the combination of the closure lid and the beverage drink container.

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Rubendall teaches a closure lid **10** having a slotted window **16**, a panel door **18** having a boss **32** for actuating the panel door, said panel door fitted into a pair of tracks **28**. The cross hatching of the closure lid and beverage container are the same, thus the material is the same.

5. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Butler (US 3,938,690).

It is noted that the preamble of the claims clearly only set forth the closure lid as the claimed invention. The closure lid does not require the beverage container structure but merely needs to be capable of being used with a beverage container. Thus, claim 1 is considered to be drawn only to the closure lid.

Butler teaches a closure lid **1** having a slotted window **4**, a panel door **6** having a boss **11** for actuating the panel door, said panel door fitted into a pair of tracks **7** and **8**.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butler in view of Wong (US 6,824,003).

Wherein dependent claims 2-4 positively set forth a relationship between the closure lid and the beverage drink container, these claims are considered to be drawn to the combination of the closure lid and the beverage drink container.

Butler is silent regarding the specifics of the lid and/or beverage container material composition.

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Wong teaches "the lid may be used with cups of various types, and is particularly suitable for use with disposable cups of the type commonly used as carry-out containers for beverages such as coffee and the like".

Official notice is taken that "disposable cups of the type commonly used as carry-out containers for beverages such as coffee and the like" are formed of paper, plastic and laminated paper and the lids are generally formed of plastic.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the lid of a different material composition than the beverage container, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

8. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butler in view of Straub (US 2,304,214).

Butler teaches the claimed lid except for two pair of tracks.

Straub teaches it is known to provide a lid having a sliding door panel with two pair of spaced tracks.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the single pair of tracks of Butler as two pair of spaced tracks as taught by Straub, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Doing so in the instant case utilizes less material to manufacture the lid with two pairs of spaced tracks.

9. Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Butler.

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Wherein dependent claims 18 and 19 positively set forth a relationship between the closure lid and the beverage drink container, these claims are considered to be drawn to the combination of the closure lid and the beverage drink container.

Butler is silent in the written description regarding the specifics of the lid and/or beverage container material composition. However, the cross section of the material of the lid and the beverage container are shown to be the same.

Official notice is taken that handle beverage containers as depicted in the drawings are known in the container art to have lids of the same material composition.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the lid of the same material composition than the beverage container, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Butler in view of Straub.

Butler teaches the claimed lid except for two pair of tracks.

Straub teaches it is known to provide a lid having a sliding door panel with two pair of spaced tracks.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the single pair of tracks of Butler as two pair of spaced tracks as taught by Straub, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. Doing so in the instant case utilizes less material to manufacture the lid with two pairs of spaced tracks.

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11. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 3 above, and further in view of Wong.

Wherein dependent claim 14 positively sets forth a relationship between the closure lid and the beverage drink container, the claim is considered to be drawn to the combination of the closure lid and the beverage drink container.

Butler is silent regarding the specifics of the lid and/or beverage container material composition.

Wong teaches "the lid may be used with cups of various types, and is particularly suitable for use with disposable cups of the type commonly used as carry-out containers for beverages such as coffee and the like".

Official notice is taken that "disposable cups of the type commonly used as carry-out containers for beverages such as coffee and the like" are formed of paper, plastic and laminated paper and the lids are generally formed of plastic.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the lid of a different material composition than the beverage container, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Allowable Subject Matter

12. Claims 9-12, 16 and 17 are objected to as being dependent upon a rejected base claim and appear to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art disclosures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

14. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

15. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

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If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to Errica Miller at (571) 272-4370.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RAH
November 14, 2005

A handwritten signature in black ink, appearing to read 'R. Hylton', with a long horizontal flourish extending to the right.

Robin A. Hylton
Primary Examiner
GAU 3727